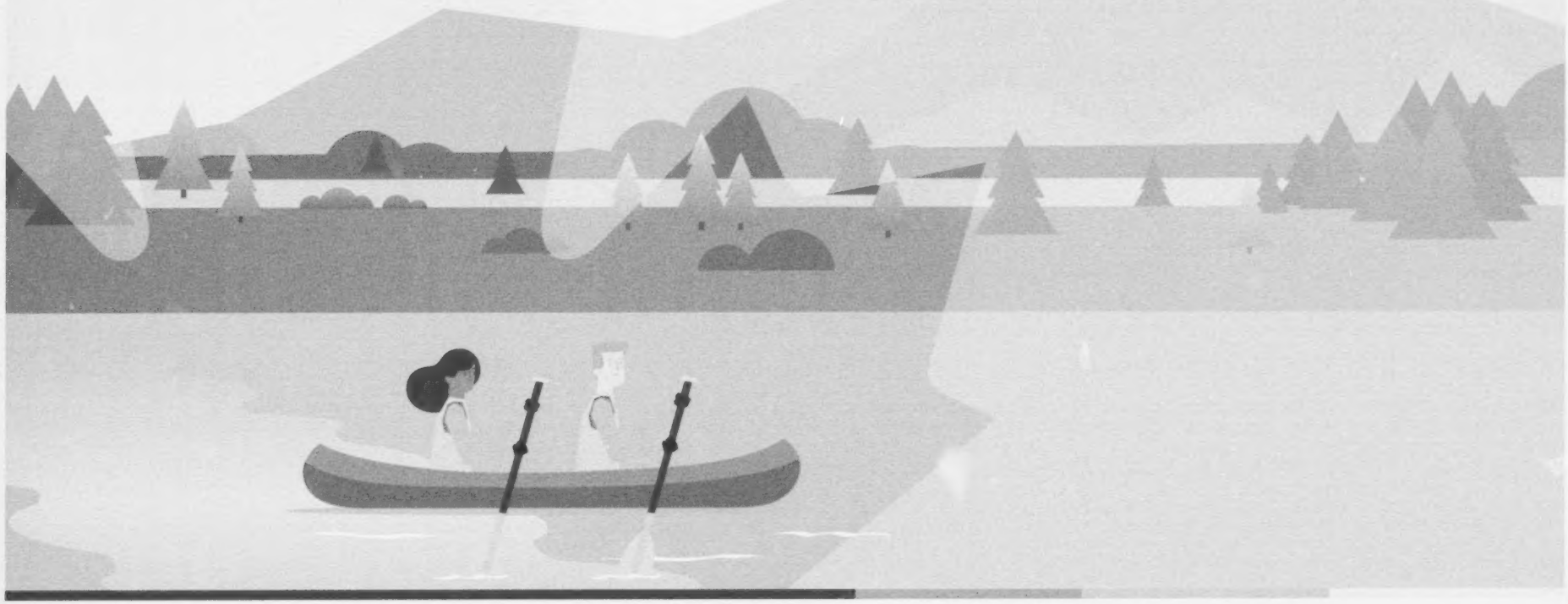
Government of Canada / Gouvernement du Canada

THE CANADIAN NAVIGABLE WATERS ACT

RESTORING LOST PROTECTIONS AND KEEPING CANADA'S NAVIGABLE WATERS OPEN FOR PUBLIC USE FOR YEARS TO COME



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OVERVIEW

WHAT WE ARE DOING

In the Speech from the Throne, the Government of Canada promised to review and modernize environmental and regulatory processes and introduce new processes that properly serve the public.

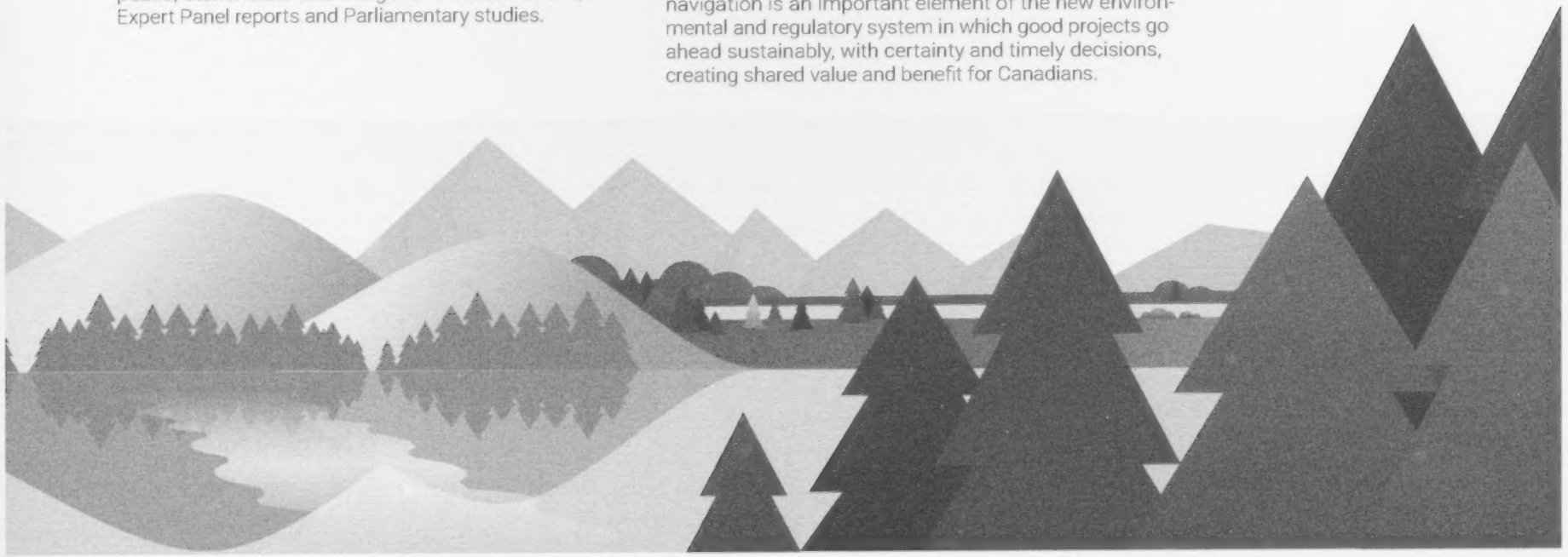
In June 2016, the Government launched a comprehensive review to address concerns about previous reforms to environmental assessment processes, lost protections for our fish and waterways, and the need to modernize the National Energy Board.

The Government has delivered on its promise by introducing new legislation that improves and modernizes environmental assessments and regulatory processes. This milestone was informed by over 14 months of public, stakeholder and Indigenous consultations, Expert Panel reports and Parliamentary studies.

Canada must protect the public right to navigate on all Canadian navigable waters.

We are restoring lost protections so that recreational boaters and Indigenous peoples can continue to travel Canada's vast network of rivers, lakes and canals for years to come.

Canada's large network of navigable waters must remain open for Canadians to use. Protecting the public right of navigation is an important element of the new environmental and regulatory system in which good projects go ahead sustainably, with certainty and timely decisions, creating shared value and benefit for Canadians.



WHY WE ARE DOING IT

Canadians rely on Canada's coasts, lakes, rivers, and other bodies of water for travelling, for shipping goods, and for enjoying recreational activities like canoeing and kayaking.

We heard that many Canadians were concerned that legislative changes in 2012 reduced protections for navigable waters in Canada. Once the legislation is adopted, the Canadian Navigable Waters Act will:

- restore lost protections so that recreational boaters can continue to travel Canada's vast network of rivers, lakes and canals for years to come;
- deliver greater transparency about proposed projects that could affect navigation;
- allow good projects to move forward; and
- provide opportunities for Indigenous people to partner with Canada in the administration of protections and safeguards.

Once law, the Canadian Navigable Waters Act will help the Government of Canada keep its promise to better protect the public right to travel Canada's navigable waters, restore public trust while providing shared benefits to Canadians, Indigenous peoples and businesses

During our consultations, we heard that Canadians:

- want lost protections restored and greater oversight of navigable waters in Canada;
- expect federal processes and decisions about navigation to be open, accessible and transparent;
- want to have a say in projects that could affect their navigation before they are built;
- support partnerships with Indigenous peoples to help protect navigation; and
- want regulatory processes to remain efficient, predictable and include the power to enforce the new Act.

We also heard that government departments need to continue to work together to develop and promote an efficient environmental and regulatory system that contributes to better project planning.

WHAT IT WILL IMPROVE

The proposed Canadian Navigable Waters Act would provide new protections on all navigable waters, with greater oversight for navigable waters where it is needed most and that are of greatest importance to Canadians and to Indigenous peoples, including eligible Heritage and longest wild and free-flowing rivers.

The proposed legislation would also include new modern safeguards that provide greater transparency in navigation-related decision-making and processes and would provide opportunities for local communities to have a say in projects that could affect navigation.

PURPOSE

This document outlines the key changes to navigation protection legislation and next steps, based on the following five themes:

- Understanding Transport Canada's role in the government's environmental assessment system
- Protecting the public right of navigation on all navigable waters in Canada
- Creating greater openness, transparency and public participation opportunities
- Partnering with Indigenous peoples
- Adopting transparent and timely processes and enhanced enforcement mechanisms

THE NEW IMPACT ASSESSMENT SYSTEM – TRANSPORT CANADA'S ROLE

The government is proposing a new impact assessment approach to assess environmental, health, economic, and social impacts, including gender-based analysis, to provide a more fulsome picture of a project's impacts on communities to better inform decision-making. The new impact assessment regime will ensure that the right projects undergo an impact assessment. The government has launched a process to seek Canadians' feedback on reviewing and revising the project list to ensure that projects with the greatest potential for environmental impacts in federal jurisdiction are captured.

Under the Canadian Navigable Waters Act, approvals for designated major projects on any navigable water would only be issued after the new comprehensive impact assessment is complete and the project is approved.

Restored protections and modern safeguards for the public right of navigation would allow Transport Canada to oversee navigation protections in all navigable waters in Canada, including those the existing law does not protect.

PROTECTING THE PUBLIC RIGHT OF NAVIGATION ON ALL NAVIGABLE WATERS IN CANADA THROUGH THE CANADIAN NAVIGABLE WATERS ACT

What are the key changes?

The Canadian Navigable Waters Act would restore lost protections and provide new modern safeguards on all navigable waters in Canada, including:

- a new requirement for approvals of major works that significantly impact navigation on all navigable waters, such as large dams or other works;
- authority for the Minister of Transport to regulate obstructions on all navigable waters;
- a requirement for owners to notify the public and give people the opportunity to ask questions and express concerns **before** construction begins on all navigable waters;
- authority for the Minister of Transport to review works on navigable waters (not listed in the Schedule to the Act) where there are unresolved navigation concerns;
- a better process with clear criteria to identify navigable waters that should receive extra oversight, and add these to the Schedule. Under the Canadian Navigable Waters Act, Transport Canada would provide extra oversight for navigable waters that need it the most and those that are of greatest importance to Canadians, including eligible Heritage and longest wild and free-flowing rivers;
- new powers for the Minister of Transport to study and collect information necessary for the purposes of administering the Act (e.g., studies on cumulative navigation); and
- a renewed nation-to-nation relationship with Indigenous peoples based on the recognition of rights, respect, cooperation and partnership.

Note: Works are any structure, device or thing – temporary or permanent – made by humans that is in, on, over, under, though or across any navigable water. They can be small works like docks or large works like dams.

What works are assessed?

The Canadian Navigable Waters Act would require proposed major works (such as large dams) to receive an approval **before** building begins on all navigable waters in Canada.

> **Note:** Transport Canada would work with Canadians, stakeholders and Indigenous groups to identify the types of works that pose the highest risk to navigation and include them in a "major works" category.

The Canadian Navigable Waters Act would also require an approval to construct or place works in, on, over, under, through or across a Scheduled navigable water in Canada that may interfere with navigation.

For navigable waterways not on the Schedule, the Canadian Navigable Waters Act would require that proponents issue a public notice and provide information about proposed works (except for minor works) on all navigable waters to give people the opportunity to ask questions and voice concerns before construction begins.

It would also introduce a resolution process that would allow the Minister of Transport to review navigation concerns for works on navigable waters not listed on the Schedule where the concerns are not resolved.

Minor works, such as docks and boat ramps, are subject to pre-determined requirements on all navigable waters. Where minor works meet these requirements they do not need to seek approvals.

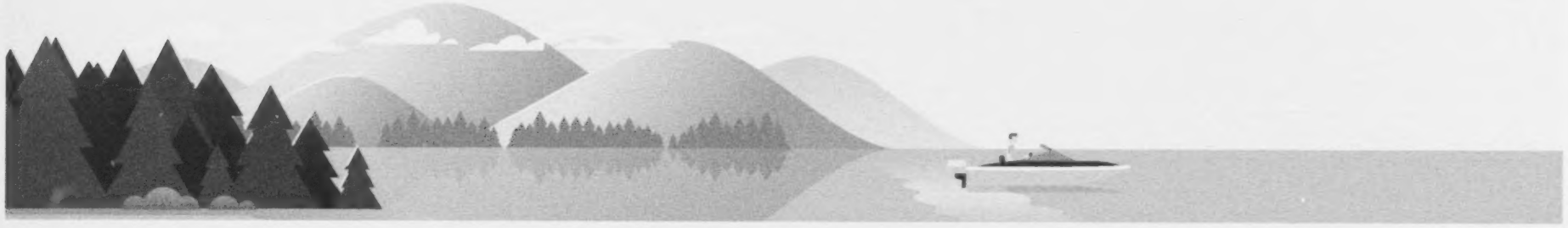
What are Scheduled navigable waters?

The Canadian Navigable Waters Act includes protections for navigation on **all** navigable waters in Canada. Scheduled navigable waters are listed on a Schedule to the Act so that any works in those waterways that may interfere with navigation can receive extra oversight.

The Canadian Navigable Waters Act includes new criteria and a better process for **adding** navigable waters to the list. For example, the waterways that would be considered for inclusion are those with the greatest need for extra oversight and of greatest importance to Canadians and Indigenous peoples, including eligible Heritage and wild and longest free-flowing rivers.

Navigable waters could be added to the Schedule based on the following factors:

- **whether the waterway is charted;**
- **its physical characteristics;**
- **how it connects with other navigable waters;**
- **the safety of navigation;**
- **past, current and anticipated use;**
- **use by Indigenous peoples to exercise their rights; and**
- **the cumulative impact of works on navigation in the waterway.**



When would Canada expand the number of navigable waterways on the Schedule receiving extra oversight?

As the proposed legislation goes through the Parliamentary process, Transport Canada will continue to engage with Canadians on the navigable waterways that should receive extra oversight (listed in the Schedule) under the Canadian Navigable Waters Act. A Ministerial Order to add new navigable waters to the Schedule would be made should the Bill enter into law.

How are Navigable Waters defined in the Canadian Navigable Waters Act?

The new, detailed definition would include any body of water that is used (or is reasonably likely to be used) by vessels:

- as a means of travel or transport for commercial or recreational purposes or as a means of travel or transport by Indigenous peoples to exercise their rights; and
- where there is public access, two or more waterfront owners, or where the Crown is the sole waterfront owner.

Note: This definition may increase the number of waters considered navigable. It is not intended to capture ditches and irrigation channels.

What is an Obstruction?

An obstruction is anything that prevents or slows navigation, or makes it more difficult or dangerous. Wrecks or vessels that are left anchored, moored or adrift can be obstructions.

How will Transport Canada address risks from Obstructions?

The Canadian Navigable Waters Act would enable the Minister of Transport to more fully address obstructions **and** potential obstructions on all navigable water in Canada, by:

- having the authority to order a person in charge of an obstruction or a potential obstruction, in any navigable water, to take action (e.g. repair, secure, move, remove, dismantle or destroy it); and
- being able to take any action (e.g. repair, secure, move, remove, dismantle or destroy it) in all navigable waters where the person in charge is not known or cannot be located, and recover associated costs where possible.

The Minister's power to address abandoned and wrecked vessels, by allowing any person to take possession and remove an abandoned or wrecked vessel, would be expanded to apply in all navigable waters. This power would be transferred to the *Wrecked, Abandoned or Hazardous Vessels Act* (as proposed in Bill C-64), once enacted.

For more information, please visit:
https://www.canada.ca/en/transport-canada/news/2017/10/national_strategytoaddresscanadawreckedandabandonedvessels.html.

GREATER OPENNESS, TRANSPARENCY AND PUBLIC PARTICIPATION OPPORTUNITIES

What will be different?

The Canadian Navigable Waters Act would give local communities and Indigenous peoples an opportunity to have a say in projects that could affect their navigation, because it would require owners to:

- issue a public notice and provide information about proposed works (except for minor works meeting the assessment criteria) on all navigable waters; and
- give people the opportunity to voice concerns **before** construction begins.

The Act would also include new, modern safeguards such as:

- a new online public registry, so Canadians can access information on proposed works in their communities; and
- making the factors that are considered when approving a work very clear, including the cumulative impact that multiple works could have on navigation.

What tools are available to a community if a proposed work could affect someone's public right of navigation?

The proposed Canadian Navigable Waters Act would require owners to provide information and issue a **public notice** and give an **opportunity for engagement** about proposed works (except for minor works meeting the assessment criteria) before construction can begin on any navigable water. The new notification requirements would allow communities to ask questions, raise concerns and propose solutions early in the development process. An important tool for communities to be informed of proposed works is the new **public registry**, a new modern safeguard to allow for greater transparency in navigation-related decision-making and processes.

Notification requirements would vary depending on the type of work and where it is located:

For works that are located on navigable waters not listed on the Schedule:

- ✔ Owners would be required to provide information and issue a public notice of the proposed work and allow communities to meaningfully engage with them to address navigation-related concerns.
- ✔ If any navigation-related concern(s) cannot be resolved between the owner and the community, the community may request that the Minister of Transport review their concern(s).
- ✔ The Minister of Transport would review the community's navigation concern(s) and determine whether the owner should go through the formal approval process.

For works (except for minor works meeting the assessment criteria) located on navigable waters listed on the Schedule and major works on all navigable waters:

- ✔ Owners would be required to submit an application to the Minister of Transport for these works.
- ✔ As part of this application, the owner would now always be required to provide information and issue a public notice of the proposed work and allow communities time to provide comments on the proposal to the Minister of Transport.
- ✔ The Minister would consider the information provided in the application package as well as comments raised during the notice period when deciding to issue an approval.

A GREATER FOCUS ON PARTNERING WITH INDIGENOUS PEOPLES

Reconciliation requires sustained government-wide action and needs to be at the center of our activities. Early and inclusive opportunities for engagement and participation with Indigenous peoples, and consultation that aims to secure free, prior and informed consent through processes based on mutual respect and dialogue is at the heart of the Canadian Navigable Waters Act. Partnerships with Indigenous peoples must recognize and respect their:

- rights and interests;
- deep connection to their lands, territories and resources; and
- desire to participate in the economic development of their territories.

The Canadian Navigable Waters Act would create new opportunities for Indigenous peoples to partner with Canada. For example, it would:

- enable partnership agreements with Indigenous groups for activities such as monitoring navigable waters, enforcing the rules, and making decisions;
- direct decision-makers to consider and protect any traditional knowledge Indigenous groups provided as part of the approval process;
- direct decision-makers to consider any adverse effects a decision may have on Indigenous rights; and
- introduce a new definition of a "navigable water" that includes travel on the water to exercise Indigenous rights.

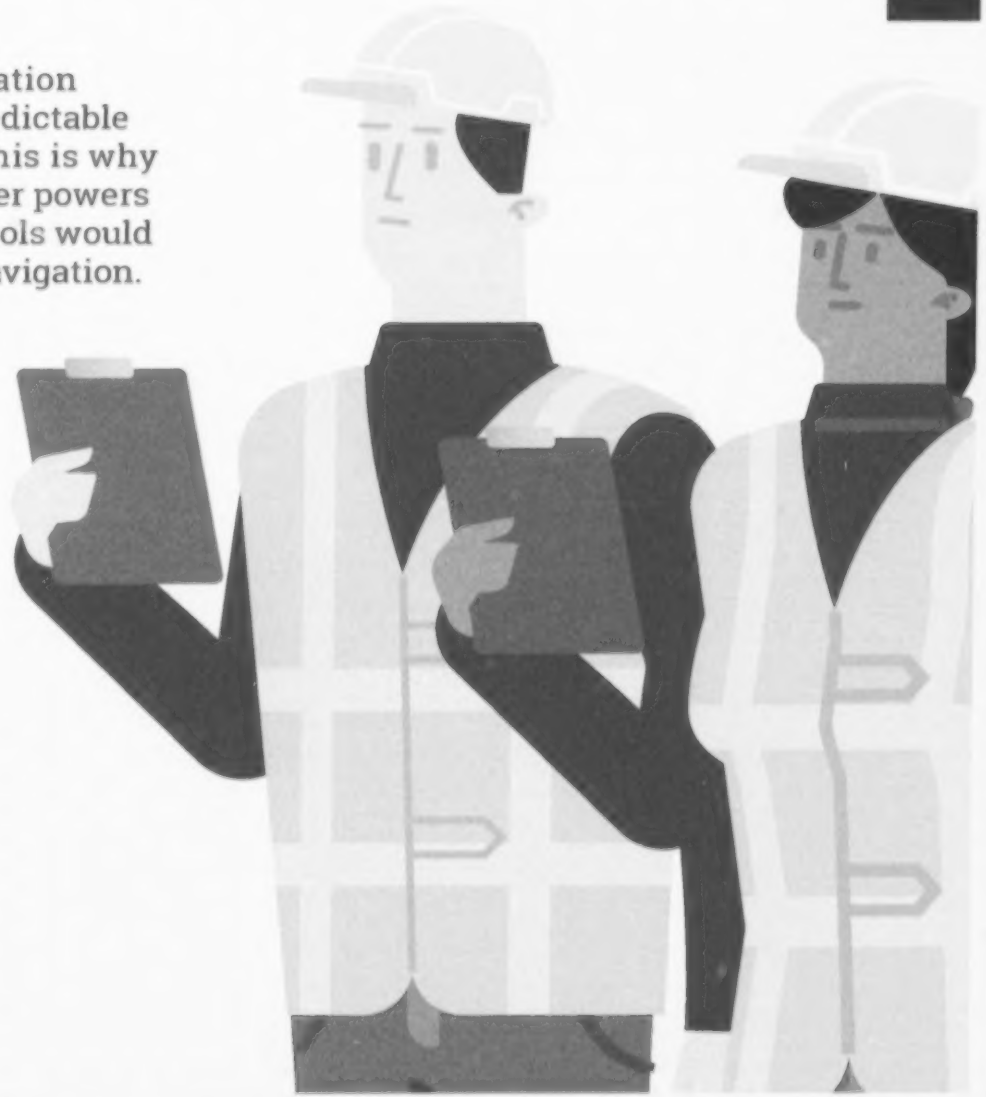
STRONG ENFORCEMENT AND PREDICTABLE AND TIMELY PROCESSES

Canadians have told us they want the navigation protection system to remain efficient and predictable and include the power to enforce the rules. This is why the proposed legislation would provide greater powers to enforce the new Act. These enforcement tools would allow us to better protect the public right of navigation.

What are the proposed enforcement tools?

The Canadian Navigable Waters Act would provide greater powers to enforce the Act. These would include:

- new authorities to enhance compliance with the Act;
- greater penalties for violations and offences; and
- longer limitation periods for violations and offences.



NEXT STEPS

The Government of Canada's proposed environmental and regulatory system, if adopted, will put in place better rules to:

- protect the environment;
- protect Canada's navigable waters;
- regain public trust;
- strengthen our economy; and
- support reconciliation with Indigenous peoples.

Visit canada.ca/environmentalreviews for more information.